

1 LOWENSTEIN SANDLER PC
2 Attorneys at Law
3 65 Livingston Avenue
4 Roseland, New Jersey 07068
5 973.597.2500
6
7 Attorneys for Defendants
8

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEW JERSEY

11 ILLINOIS NATIONAL INSURANCE
12 COMPANY,

13 Plaintiff,

14 v.

15 WYNDHAM WORLDWIDE OPERATIONS,
16 INC; WYNDHAM WORLDWIDE
17 CORPORATION; WYNDHAM VACATION
18 OWNERSHIP, INC.; and WYNDHAM
19 RESORT DEVELOPMENT
20 CORPORATION,

21 Defendant.

CASE NO. 09-1724

DECLARATION OF ROBERT KERN, ESQ.

22 STATE OF CALIFORNIA :

23 SS :

24 COUNTY OF LOS ANGELES :

25 I, ROBERT KERN, ESQ., of full age, being duly sworn according to law, upon my oath
26 depose and say that:

27 1. I am an Attorney-at-Law and a member of the State Bar of California and a
28 partner at Kern and Wooley LLP, located in Los Angeles, California.

338047

DECLARATION OF ROBERT KERN, ESQ.
Case No. 09-1724

1 2. Star Net Insurance Company (administered by Berkley Aviation "Berkley")
2 provides non-owned aircraft coverage to Wyndham Worldwide Operations, et al.
3 ("Wyndham") by virtue of issuing the corporate contingent aviation liability policy no.
4 BA08N1038S.

5 3. On or about August 5, 2008, Berkley was placed on notice by Wyndham of
6 potential liability arising out of the airplane accident in Gearhart, Oregon (the "Accident").

7 4. On or about August 6, 2008, Berkley confirmed coverage to Wyndham, et al.,
8 without reservation.

9 5. On or about August 6, 2008, Berkley retained the law offices of Dombroff
10 Gilmore Jaques & French to investigate and defend any potential legal proceedings that may
11 be within the terms and conditions of the aforementioned Star Net Insurance Policy.

12 6. On or about November 11, 2008, the law offices of Kern and Wooley LLP were
13 retained by Berkley to investigate and pursue any available additional insurance coverage
14 from any insurance entity that may provide insurance coverage to Wyndham, et al. for
15 defense and/or coverage involving the events of the Accident.

16 7. From the time that Berkley accepted coverage for Wyndham, Berkley's
17 interests have not been in conflict with Wyndham's interests.

18 8. Confirmation of coverage also provides Berkley with the duty to investigate all
19 other available coverages to Wyndham that may provide the duty to defend and/or coverage
20 to Wyndham for claims arising out of said Accident.

21 9. Section IV of the Policy provides that the insured "must cooperate with us in
22 any way relating to your rights and ours under this Policy. Cooperation includes but is not
23 limited to . . . your assistance in the enforcement of our rights against any person or
24 organization who/that may be liability to you because of loss or damage for which this Policy
25 provides insurance."

26 10. Pursuant to the specific referenced policy provision, Wyndham is required to
27 cooperate with Berkley to investigate and obtain all available coverages that may provide
28 any coverage to Wyndham for events arising out of the accident. Wyndham has fully

1 cooperated with Berkley in pursuit of all available coverages.

2 11. From the date Berkley was informed of the Accident, they anticipated that
3 litigation would evolve and took the necessary action to retain defense counsel, the Dornbroff
4 firm. On or after November 11, 2008, Kern and Wooley LLP was retained to investigate and
5 take the appropriate action to seek all available coverages for the benefit of Wyndham. I, as
6 a partner of Kern and Wooley LLP have been principally involved in this case, fully
7 anticipated that there would be multiple litigation activity seeking recourse against Wyndham.

8 12. As counsel for Berkley, I routinely communicate with officers and employees of
9 Berkley's insured, Wyndham, including Marcus Banks, Esq. and James Iervolino, as well as
10 Wyndham's outside counsel.

11 13. Based upon my personal experience and practice of law, I knew and expected
12 that all communications with Wyndham and Berkley, including but not limited to their
13 employees, attorneys, persons and entities related thereto, would remain confidential and
14 privileged under the law.

15 14. I also communicated with AIG Aviation on behalf of Berkley and Wyndham
16 regarding Illinois National's coverage obligations for the Accident. AIG Aviation is Illinois
17 National's claims administrator.

18 15. Berkley's communications to Wyndham, et al. involving the pursuit of insurance
19 coverage on behalf of Wyndham involved my direct participation and/or were made at my
20 direction in representing Berkley.

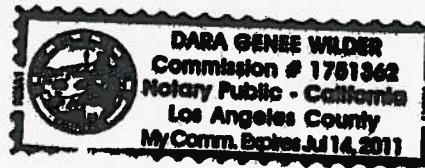
21 16. On May 4, 2009, I investigated and communicated with several law firms to be
22 retained by Berkley to represent the interest of Wyndham for events arising out of the
23 Accident. One of the law firms was Coughlin Duffy LLP. I had direct communication with
24 Coughlin Duffy LLP regarding retention to act as defense counsel for Wyndham, et al.
25 involving the lawsuit Illinois National Insurance Company v. Wyndham Worldwide
26 Operations, et al., Docket No. 09-1724, filed in the United States District Court for the District
27 of New Jersey (the "Illinois National lawsuit"). On May 4, 2009, pursuant to discussions with
28 Berkley and Wyndham (Marcus A. Banks, Esq.) we finalized the retention of Coughlin Duffy

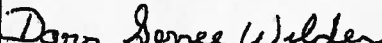
1 LLP, to represent Wyndham, et al. in the Illinois National lawsuit.

2 17. Berkley continues to investigate and participate in the defense of the
3 Underlying Actions and the Illinois National lawsuit. Berkley has contractually agreed to pay
4 all reasonable investigation and attorney's fees in the representation of Wyndham, et al.
5 legal expenses associated with the Underlying Actions and the Illinois National lawsuit.

6
7 
8 ROBERT KERN, ESQ.

9 Sworn to and subscribed
10 Before me this 1st day
11 of April, 2010



13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
12 
Notary Public